IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1158 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMBALAL JIVANJI THAKOR

Versus

STATE OF GUJARAT

Appearance:

1. First Appeal No. 1158 of 2003

MR KM SHETH for Petitioner No. 1-3

MR KT DAVE, AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 1-2

MR ANOOP KRISHNAN for M/S TRIVEDI & GUPTA for Respondent No. 1 and 2.

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 26/08/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

Admit, service of which is waived by Mr. Anoop Krishnan, learned advocate for M/s. Trivedi & Gupta for respondents.

2. The appellants, who are the original owners of the land which have been acquired for respondent no. 2, have approached this Court by way of this First Appeal making a grievance that in the judgment delivered by the Reference Court i.e. 3rd Joint Civil judge [S.D.], Ahmedabad Rural in L.A.Q. Case No. 272 of 1998 dated 30/10/2002 has completely ignored the settled law that with the change of every year of the subsequent notification increase of 10% is required to be given. Mr. K.M. Sheth, learned counsel appearing for the appellants has restricted his submission before us to this aspect alone. It may be stated that the lands of the appellants situated at village Bareja Taluka Daskoi have been acquired for the Oil and Natural Gas Commission for the purpose of making "D" Solter Plant. According to the appellants, the compensation assessed by the Special Land Price Committee was inadequate and, therefore, they had approached the Court of Ld. Civil Judge [S.D.] Ahmedabad Rural by filing Reference u/S. 18 of the Land Acquisition Act (for short 'the Act'). The Reference Court partly allowed the Reference and decided that the appellants would be entitled to have Rs.51/= per sq. mtr. as an additional compensation i.e. over and above the price assessed at Rs.8/= per sq. mtr. by the Land Price Committee. It may also be noted here that the claim of the appellants was for Rs.100/= per sq. mtr.

2.1. While deciding the Reference, the Court has placed reliance on the evidence adduced before it and also on the case law cited at the bar. It has thereafter, come to the conclusion that the appellants were entitled to Rs.51/= per sq. mtr. as an additional amount of compensation.

2.2. As stated above, Mr. Sheth has advanced only one submission regarding 10% increase which has been not taken into consideration by the Reference Court. In support of his submission, he has placed reliance on the judgment of Division Bench of this Court rendered in the case of Deputy General Manager, ONGC v/s. Chaturji Lalaji reported in 1998 (1) G.L.R. at p. 130. He has also placed reliance on the judgment of this Court

rendered in the case of Special Land Acquisition Officer v/s. Motibhai Mohanbhai reported in 1997 (2) G.L.H. at p.773 and a decision of the Apex Court rendered in the case of Special Land Acquisition Officer v/s. Mohd. Hanif Sahib Bawa Sahib reported in 2002 AIR Supreme Court Weekly at p. 1452.

3. Mr. Anoop Krishnan, learned counsel appearing for M/s. Trivedi & Gupta for respondent no. 2 has supported the judgment of the Reference Court and has submitted that the Court after taking into consideration all the relevant factors has come to the conclusion that additional amount of Rs.51/= per sq. mtr. is required to be granted and that conclusion is now not required to be disturbed in this appeal.

4. We have carefully considered the rival submissions and have also gone through the judgments cited before us by Mr. Sheth. In the present case, the notification u/S. 4 of the Act was published on 5th August, 1995 and notification u/S. 6 of the Act was published on 22nd November, 1995. The learned Judge has, however, placed reliance on the judgment delivered in L.A.Q. Case No. 375 of 1994 [Main] in respect of the same land wherein the notification u/S. 4 of the Act was published on 22nd April, 1991 and the notification u/S. 6 of the Act was published on 30th June, 1992. Mr. Sheth, therefore, has submitted that in the present case the notification u/S. 4 of the Act was published almost four years after 22nd April, 1991 and the notification u/S. 6 of the Act was published after almost three and half years. Despite that, the Reference Court has not granted 10% increase towards the appreciation of the prices of the land. The decisions cited by Mr. Sheth have made the law very clear on this aspect and it has been laid down that while determining the market value by taking price fixed under old comparable sale instance as base value, 10% increase by way of appreciation in value of land for every subsequent year has to be granted. We have noticed that the Reference Court has completely missed this aspect. We have to therefore, accept the submission of Mr. Sheth.

4.1. Since no other submission is advanced before us, we do not go into the other questions in this appeal. According to Mr. Sheth, with 10% increase for 4 years, the market price of the land is required to be enhanced by Rs.71-40 ps. per sq. mtr. in place of Rs.51/= per sq. mtr. as determined by Reference Court.

5. Since the appellants have already

received the amount determined by the Reference Court, respondents are now directed to deposit the amount enhanced (i.e. Rs.20-40 ps. per sq. mtr.) by this Court together with all consequential benefits permissible under the Act on the enhanced amount within a period of three months from the date of receipt of writ of the order.

The net result is that the appeal is partly allowed to above extent with no order as to costs.

[KSHITIJ R. VYAS, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.